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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/760,179

01/16/2004

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2001U-001640

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27572

7590

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EXAMINER

SAN MARTIN, EDGARDO

ART UNIT

PAPER NUMBER

2837

DATE MAILED: 10/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Application No.

10/760.179

Applicant(s)

ALCINI ET AL.

Examiner

Edgardo San Martin

Art Unit

2837

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 August 2006.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 1 – 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Yashiro et al. (US 5,614,699).

With respect to claims 1 and 16, Yashiro et al. teach a method and an arrangement of controlling exhaust flow in an exhaust system for a non-conventional internal combustion power source exhibiting, during operation, larger ranges of acoustic frequency, flow rate or pressure in exhaust flow than found in conventional internal combustion power sources (Col.1, Line 59 – Col.3, Line 41), the method comprising placing a passive temperature resistant valve (Fig.8, Item 16) in a path of exhaust gas flow, the valve operative to at least partially alter a characteristic of the exhaust gas flow for the larger ranges (Col.7, Lines 3 – 14).

With respect to claims 2 – 5 and 17 – 20, Yashiro et al. teach wherein the characteristic of the exhaust gas flow comprises at least one of flow restriction, flow reflection and flow direction (Col.2, Lines 1 – 16, 36 – 41 and 47 – 67); and wherein the passive, temperature resistant valve is placed substantially at a midpoint of the exhaust system (Fig.8, Col.7, Lines 3 – 14).

With respect to claims 6 and 21, Yashiro et al. teach a method and an arrangement of sound control in an exhaust system for an internal in exhaust gas flow during combustion power source exhibiting discontinuities operation (Col.1, Line 59 – Col.3, Line 41), the method comprising placing a passive, temperature resistant valve (Fig.8, Item 16) in a path of exhaust gas flow, the valve operative to at least partially alter restriction of the exhaust gas flow whenever a discontinuity occurs (Col.7, Lines 3 – 14).

With respect to claims 7 – 15 and 22 – 24, Yashiro et al. teach wherein the passive, temperature resistant valve (Fig.8, Item 16) increases restriction of exhaust gas flow whenever a discontinuous predetermined decrease in exhaust gas flow rate occurs (Col.1, Line 59 – Col.3, Line 41 and Col.7, Lines 3 – 14); wherein the passive, temperature resistant valve restricts exhaust gas flow via a valve surface extending substantially perpendicular to a longitudinal axis of exhaust flow (Fig.8); and wherein the valve (Fig.8, Item 16) surface is positioned in a resonator (Fig.8, Items 2 and 4B) having an inlet (Fig.8, Item 9) coupled to an interior conduit extending into the resonator and terminating in the resonator adjacent to the valve surface (Fig.8).

Response to Arguments

2. Applicant's arguments filed August 3, 2006 have been fully considered but they are not persuasive. The Examiner gave little patentable weight to the recitation established in the preamble of the claim because it has been held that a preamble is denied the effect of a limitation where the claim following the preamble is a self-

contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951); additionally, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex Parte Masham*, 2 USPQ F.2d 1647 (1987). The Examiner considers that the patent to Yashiro et al. teach the limitations described in the claims, as discussed above.

Conclusion

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Contact Information

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edgardo San Martín whose telephone number is (571)272-2074. The examiner can normally be reached on 8:00AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paula Bradley can be reached on (571) 272-2800 ext.33. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Edgardo San Martín
Primary Examiner
Art Unit 2837
Class 181
October 10, 2006